



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

RENAISSANCE HOSPITAL
C/O BURTON & HYDE PLLC
PO BOX 684749
AUSTIN TX 78768-4749

Respondent Name

TEXAS COUNCIL RISK MANAGEMENT FUND

Carrier's Austin Representative Box

Box Number 43

MFDR Tracking Number

M4-07-4888-02

MFDR Date Received

APRIL 9, 2007

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "This bill should have been audited and reimbursed per the Stop-Loss reimbursement factor and methodology per the criteria as defined in TDI-DWC rule 134.401(c) (6) (A)."

Requestor's Supplemental Position Summary Dated October 2, 2011: "1. The Audited charges of \$89,768.12 for [Claimant]'s hospital inpatient admission exceeds the \$40,000 stop-loss threshold. 2. The services rendered to [Claimant] were unusually costly and extensive...because:

- **[Claimant] underwent multiple surgeries.** [Claimant's] hospital stay involved multiple surgical procedures, which included : (1) osteotomy, C5; (2) anterior discectomy, C5-C6; (3) anterior arthrodesis, C5-C6, with allograft and infuse; (4) anterior instrumentation , C5-C6, with Blackstone Hallmark plate; and (5) fluoroscopic supervision and interpretation greater than one hour.
- **[Claimant's] surgeries were complicated.** (Claimant's) surgical procedures were complicated by her medical history. [Claimant] has a history of hypertension, pneumonia, bronchitis, an enlarged right kidney, and a diagnosis of Hodgkin disease. Additionally, she has allergies to penicillin, ampicillin, viox, cipro, and wellbutrin. And [Claimant] has previously undergone other surgeries: a hysterectomy, a lateral epicondylectomy, and lymph node resections.
- **The length of stay was outside of the ordinary.** When compared to the results of a statistical survey of system-wide data maintained by the Division for hospital inpatient admissions in Texas, [Claimant's] two (2) day hospital stay was outside of the ordinary because it was longer than most others and exceeded system norms... The average length of stay for 2006 admissions with Principle Diagnosis Code (722.0) and Principle Procedure Code (81.02) was one (1) day. [Claimant's] hospital stay was outside of the ordinary (unusual) because the length of stay, two (2) days, exceeded the average length of stay for inpatient admissions involving the same Principal Procedure Code and Principal Diagnosis Code.
- **The cost of the admission was outside of the ordinary.** [Claimant's] hospital admission was outside of the ordinary because the cost of the services for this admission when compared to the results of a statistical survey of system-wide data maintained by the Division for hospital inpatient admissions in Texas exceeded the norm The average amount billed for hospital inpatient admissions system-wide in the State of Texas in 2006 was \$35,675.29. The average amount billed for hospital inpatient admissions with Principal Diagnosis Code (722.0) and Principal Procedure Code (81.02) in 2006 was \$46,400.28. The charge for [Claimant's] admission was \$89,768.12. [Claimant's] hospital admission was outside of the ordinary because the amount billed was greater than the system-wide average for 2006."
- **The costs were front-loaded.** The cost associated with the hospital's services in this case are front loaded-i.e. the injured employee underwent complicated surgical procedures requiring an investment in skilled professionals and advanced facilities and medical equipment... For these reasons, the Medical Fee

Dispute Officer should find that the second-prong of the two part test is satisfied and order additional reimbursement be paid by the carrier according to the stop-loss calculation methodology.”

Amount in Dispute: \$41,652.59

RESPONDENT’S POSITION SUMMARY

Respondent’s Position Summary: “We have reviewed the submitted documentation; and feel our original review was correct. . . . there were no unusually extensive services noted. . . . Based on the above information additional allowance is not warranted.”

Response Submitted by: JI Specialty Services, Inc., PO Box 26655, Austin, Texas 78755

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
July 26, 2006 through July 28, 2006	Inpatient Hospital Services	\$41,652.59	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers’ Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1 provides for fair and reasonable reimbursement of services not identified in an established fee guideline.
4. Texas Labor Code §413.011 sets forth general provisions related to reimbursement policies and guidelines.
5. U.S. Bankruptcy Judge Michael Lynn issued a “STIPULATION AND ORDER GRANTING RELIEF FROM AUTOMATIC STAY TO PERMIT CONTINUANCE AND ADJUDICATION OF DISPUTED WORKERS COMPENSATION CLAIMS BEFORE THE TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS,” dated August 27, 2010, in the case of *In re: Renaissance Hospital – Grand Prairie, Inc. d/b/a/ Renaissance Hospital – Grand Prairie, et al.*, in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division in Case No. 08-43775-7. The order lifted the automatic stay to allow continuance of the claim adjudication process as to the workers’ compensation receivables before SOAH, effective October 1, 2010. The order specified John Dee Spicer as the Chapter 7 trustee of the debtor’s estate. By letter dated October 5, 2010, Mr. Spicer provided express written authorization for Cass Burton of the law office of Burton & Hyde, PLLC, PO Box 684749, Austin, Texas 78768-4749, to be the point of contact on Mr. Spicer’s behalf relating to matters between and among the debtors and the Division concerning medical fee disputes. The Division will utilize this address in all communications with the requestor regarding this medical fee dispute.
6. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - 42 – Charges exceed our fee schedule or maximum allowable amount.
 - W1 – Workers compensation state fee schedule adjustment
 - W3 – Additional payment made on appeal/reconsideration.
 - 233 – Allowance based on inpatient per diem rate.
 - 1001 – Based on the corrected billing and/or additional information/documentation now submitted by the provider, we are recommending further payment to be made for the above noted procedure code.
 - 1002 – Due to an error in processing the original bill, we are recommending further payment be made for the above noted procedure.
 - 5083 – Stop-Loss threshold is established to ensure compensation for “unusually extensive” services required during admission. After reviewing the submitted documentation, it has been established that there were no unusually extensive services provided. Reimbursement will be made per ACIHFG standard per diem amount plus the additional items listed under additional reimbursement. Please reference rule 134.401(c)(6).
 - B6-This payment is adjusted when performed/billed by this type of provider. By this type of provider in this type of facility, or by a provider of this specialty.

- 16-Claim/Service lacks information which is needed for adjudication. Additional information is supplied using remittance advice remarks codes whenever appropriate.
- 18-Duplicate claim/service.
- 247-A payment or denial has already been recommended for this service.
- 5075-N-Need documentation showing hospital cost for implants.
- D1: Duplicate Control Number 75256.
- 295-Service cannot be reviewed without report or invoice. Please submit report/invoice as soon as possible to ensure accurate processing.
- 133-The recommended allowance is based on the value for concurrent supervision of three CRNAs by an anesthesiologist.

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$89,768.12. The Division concludes that the total audited charges exceed \$40,000.
2. In its original position statement, the requestor asserts that “This bill should have been audited and reimbursed per the Stop-Loss reimbursement factor and methodology per the criteria as defined in TDI-DWC rule 134.401(c) (6) (A).” 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals' November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” The requestor's original position statement failed to discuss the particulars of the admission in dispute that may constitute unusually extensive services. In its supplemental position statement, the requestor considered the Courts' final judgment. In regards to whether the services were unusually extensive, the Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually extensive services. The requestor's supplemental position statement asserts, that “The services rendered to [Claimant] were unusually costly and extensive...because: [Claimant] underwent

multiples surgeries. [Claimant's] surgeries were complicated. The requestor's position that this admission is unusually extensive due to surgical procedures fails to meet the requirements of §134.401(c)(2)(C) because the requestor failed to demonstrate how the services in dispute were unusually extensive in relation to similar spinal surgeries or admissions.

The requestor goes on to state:

The length of stay was outside of the ordinary. When compared to the results of a statistical survey of system-wide data maintained by the Division for hospital inpatient admissions in Texas, [Claimant's] two (2) day hospital stay was outside of the ordinary because it was longer than most others and exceeded system norms... The average length of stay for 2006 admissions with Principle Diagnosis Code (722.0) and Principle Procedure Code (81.02) was one (1) day. [Claimant's] hospital stay was outside of the ordinary (unusual) because the length of stay, two (2) days, exceeded the average length of stay for inpatient admissions involving the same Principal Procedure Code and Principal Diagnosis Code.

The Third Court of Appeals' November 13, 2008 opinion states that "...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases." A review of the data reports provided by the requestor finds that although length of stay for the services in dispute exceeded the average length of stay when compared to admissions with the same principal diagnosis and procedure code, the requestor did not demonstrate or explain how merely exceeding the average length of stay would: (1) constitute unusually extensive services; (2) categorize this case among the relatively few cases to which the stop-loss method may apply. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).

3. 28 Texas Administrative Code §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor in its supplemental position summary states:

The cost of the admission was outside of the ordinary. [Claimant's] hospital admission was outside of the ordinary because the cost of the services for this admission when compared to the results of a statistical survey of system-wide data maintained by the Division for hospital inpatient admissions in Texas exceeded the norm. The average amount billed for hospital inpatient admissions system-wide in the State of Texas in 2006 was \$35,675.29. The average amount billed for hospital inpatient admissions with Principal Diagnosis Code (722.0) and Principal Procedure Code (81.02) in 2006 was \$46,400.28. The charge for [Claimant's] admission was \$89,768.12. [Claimant's] hospital admission was outside of the ordinary because the amount billed was greater than the system-wide average for 2006.

The division notes that the audited charges of \$162,438.50 are discussed above as a separate and distinct factor pursuant to 28 Texas Administrative Code §134.401(c)(6)(A)(i). The requestor asserts that because the amount **billed charges** exceeds the average for the same principal diagnosis and procedure codes, and the costs were front-loaded, the **cost** of the services is therefore "out of the ordinary." Although the requestor lists and quantifies **billing** data, the requestor fails to list or quantify the **costs** associated with the disputed services. In the adoption preamble to the Division's former *Acute Care Inpatient Hospital Fee Guideline*, 22 *Texas Register* 6276, the division concluded that "hospital charges are not a valid indicator of a hospital's costs of providing services."

The requestor further states:

The costs were front-loaded. The cost associated with the hospital's services in this case are front loaded-i.e. the injured employee underwent complicated surgical procedures requiring an investment in skilled professionals and advanced facilities and medical equipment.

The requestor does not list or quantify the costs associated with these resources in relation to the disputed services, nor does the requestor provide documentation to support a reasonable comparison between the resources required for the spinal surgery. Therefore, the requestor fails to demonstrate that the resources used in this particular admission are unusually costly when compared to resources used in other types of surgeries.

The division concludes that the billed charges for the services do not represent the cost of providing those services. The requestor fails to demonstrate that the hospital's resources used in this particular admission are unusually costly.

4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
- Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” Review of the submitted documentation finds that the length of stay for this admission was one surgical days and one ICU/CCU; therefore the standard per diem amounts of \$1,118.00 and \$1,560.00 apply respectively. The per diem rates multiplied by the allowable days result in a total allowable amount of \$2,678.00.
 - 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).”
 - A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$49,110.90.
 - The Division finds the total allowable for the implants billed under revenue code 278 is:

Description of Implant per Itemized Statement	Quantity	Cost Invoice	Cost + 10%
Imp Screw Self Drill 4.0 x	4	\$360.00/each	\$1,584.00
Imp Pins Casper Dist	2	No support for Cost/Invoice	\$0.00
Imp Bone Growth Stimulator	1	\$4,200.00	\$4,620.00
Imp Graft Infuse Bone Med	1	No support for Cost/Invoice	\$0.00
Imp Fixation Pin	1	No support for Cost/Invoice	\$0.00
8mm Cervical Allograft Blackstone	1	\$1,100.00	\$1,210.00
Imp Plate 35mm Zephir	1	\$2,310.00	\$2,541.00
Imp Screw Locking	2	\$275.00/each	\$605.00
TOTAL	13		\$10,560.00

- 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$287.50/unit for Thrombinar 10,000 units. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The division concludes that the total allowable for this admission is \$13,238.00. The respondent issued payment in the amount of \$25,673.50. Based upon the documentation submitted no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

Authorized Signature

_____	_____	3/07/2013
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.